

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JOHN GARRETT,)
Plaintiff,) Case No. 004-863
v.) JURY TRIAL DEMANDED
DR. ALIE,)
Defendant.)-----

ANSWER TO COMPLAINT

Defendant Sitta Gombeh-Alie, M.D. ("Answering Defendant"), by and through her undersigned counsel, for her Answer to Plaintiff's Complaint, states as follows:

To the extent the allegations of Plaintiff's Complaint constitute legal conclusions, no response is required. To the extent the factual allegations of Plaintiff's Complaint are consistent with his medical records, they are admitted; otherwise, they are denied. Dr. Alie is without information or knowledge sufficient to form a belief as to the truth or falsity of allegations regarding statements or actions of third parties outside of her presence, and so such allegations are denied. Dr. Alie denies that she was deliberately indifferent to any serious medical need or that she violated the Plaintiff's civil rights in any manner. She also denies that she was negligent in any manner proximately causing injury to the Plaintiff.

ADDITIONAL DEFENSES

1. Plaintiff fails to state a claim upon which relief can be granted.
2. Answering Defendant was not deliberately indifferent to any serious medical need.

3. Plaintiff fails to state a claim against Answering Defendant for medical negligence.

4. To the extent Plaintiff states a claim for medical negligence, such claim is barred by Plaintiff's failure timely to file, or seek an extension to file, an affidavit of merit pursuant to 18 *Del. C.* § 6853.

5. Plaintiff's injuries, if any, were caused by parties over whom Answering Defendant had no authority or control.

6. Answering Defendant was not acting under color of State or Federal law.

7. Answering Defendant provided Plaintiff with medical care that was appropriate for his conditions and which met the applicable standard of care.

8. Answering Defendant, at all times material to the allegations in the Complaint, acted in good faith and with the reasonable belief, both objective and subjective, that her actions were lawful and not in violation of the rights of Plaintiff under the Constitution and laws of the United States and/or the State of Delaware.

9. Answering Defendant is entitled to good faith immunity.

10. Plaintiff's claims may be barred or limited by the provisions in the United States Civil Rights Act, as discovery may show.

11. Plaintiff's claims may otherwise be barred by 28 U.S.C. §1915.

12. Plaintiff's claims may be barred or limited by contributory/comparative negligence.

13. Plaintiff failed to mitigate his damages.

14. Plaintiff's claims are barred by failure of service, by failure of service of process, lack of subject matter and/or personal jurisdiction.

15. Answering Defendant reserves the right to assert additional defenses in the future to the extent warranted by discovery.

WHEREFORE, Answering Defendant Sitta Gombeh-Alie respectfully requests entry of judgment in her favor and against Plaintiff together with costs and attorneys' fees and such other relief as this Honorable Court deems just and appropriate.

BALICK & BALICK, LLC

/s/ James E. Drnec

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Date: February 29, 2008